

REMARKS

Claims 1-20 have been canceled. Claims 21-35 are pending in the application. Claims 21, 23, 24, 25, 27, 28, 30, 32, 34 and 35 were rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 5, 10, 20, 26, 27 and 29 of prior U.S. Patent No. 6,311,323. The examiner has maintained that this is a statutory double patenting, which cannot be overcome by a terminal disclaimer (citing In re Goodman 29 USPQ2d 2010 (Fed. Cir. 1993)).

Applicants respectfully disagree that statutory double patenting applies to the present facts. As noted in In re Goodman:

The double patenting determination involves two inquiries. First, is the same invention claimed twice? General Foods Corp. v. Studiengesellschaft Kohle mb H, 972 F.2d 1272, 1278, 23 U.S.P.Q.2D (BNA) 1839, 1843 (Fed. Cir. 1992). This inquiry hinges upon the scope of the claims in question. Id. at 1280; In re Vogel, 57 C.C.P.A. 920, 422 F.2d 438, 441, 164 U.S.P.Q. (BNA) 619, 621-22 (CCPA 1970). *If the claimed inventions are identical in scope*, the proper rejection is under 35 U.S.C. § 101 because an inventor is entitled to a single patent for an invention. Miller v. Eagle Mfg. Co., 151 U.S. 186, 197, 38 L. Ed. 121, 14 S. Ct. 310 (1894); In re Stanley, 41 C.C.P.A. 956, 214 F.2d 151, 153, 102 U.S.P.Q. (BNA) 234, 236 (CCPA 1954).

Id. at 2017 (emphasis added.) Here, the claimed inventions are not *identical in scope*. Compare, for example, claim 1 of the 6,311,323 patent with claim 21 of the present application:

1. A computer-readable medium containing computer-executable instructions to perform a method for assisting a computer programmer in real-time to modify a present programming language statement of a computer program, the method comprising:	21. A computer-readable medium containing computer-executable instructions to perform a method for assisting a computer programmer in real-time to modify a present programming language statement of a computer program, the method comprising:
enabling a programming language editor having a character position cursor and a	enabling a programming language editor having a character position cursor and a

randomly positionable pointer;	randomly positionable pointer;
partially compiling available ones of a plurality of programming language statements in said computer program;	partially compiling available ones of a plurality of programming language statements in said computer program;
defining a finite set of programming language statement information that is relevant to at least one segment of the present programming language statement from among said plurality of programming language statements that is proximate to said character position which allows modification of the programming language statement;	defining a finite set of programming language statement information that is relevant to at least one segment of the present programming language statement from among said plurality of programming language statements that is proximate to said character position which allows modification of the programming language statement; and
automatically generating a passive assist window that contains said finite set of programming language statement information in a location proximate to said character position cursor that does not obstruct the current view of said programming language statement;	automatically generating a passive assist window that contains said finite set of programming language statement information in a location proximate to said character position cursor that does not obstruct the current view of said programming language statement.
modifying the present programming language statement based at least in part on the selected programming language statement information; and	
automatically removing the passive assist window when the programming language	

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statement has been amended.	
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Inasmuch as the claims are not *identical* in scope, the statutory double patenting rejection should be withdrawn. Applicants respectfully request reconsideration of the same.

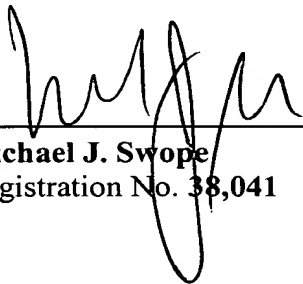
Claims 22, 26, 31 and 33 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have rewritten the claims in allowable form.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the Examiner cannot allow the present application for any reason, the Examiner is encouraged to contact Applicants' representative.

Applicants respectfully request acknowledgement of the Information Disclosure Statement submitted on May 3, 2005.

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